

RECEIVED
CENTRAL FAX CENTER
MAY 20 2010

IN THE UNITED STATES
PATENT AND TRADEMARK OFFICE

Attorney Docket : 137808-US-NP
Application No.: 10/773,226
Filing Date: February 9, 2004
Patent No.: 7,590,055
Issue Date: September 15, 2009
First Named Inventor : Jonathan Dean Segel
Title: High availability broadband connections through switching from
wireline to diverse wireless network

COMMISSIONER FOR PATENTS
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450

SIR:

Reply To Decision Dismissing
Request for Recalculation of PTA in View of Wyeth

In reply to the Decision dismissing the patentee's Request for Recalculation of Patent Term Adjustment (PTA) in View of Wyeth (herein REQUEST) for the above- identified patent, patentee submits that the dismissal for ineligibility is improper.

Due to an apparent discrepancy in the data utilized by the Patent and Trademark Office (PTO) in considering the eligibility of the REQUEST, the PTO apparently deemed the REQUEST ineligible under reason E) identified in the Decision. Under reason E), a request for PTA recalculation is deemed ineligible when it is filed more than one-hundred-eighty (180) days after the grant date of the patent and is not filed within two months of a dismissal of a request for reconsideration of the patent term under 37 CFR 1.704(d).

However, patentee's REQUEST was timely filed within the applicable time frame/s. Thus, the dismissal is improper.

The grant date of the above identified patent is September 15, 2009.

Accordingly, a timely REQUEST may be filed within one-hundred-eighty days from that grant date, the last day for filing the REQUEST being Sunday March, 14, 2010.

Since the day, or the last day, for taking any action with respect to the filing of the REQUEST in the PTO falls on Saturday, Sunday, or a Federal holiday within the District of Columbia, the action may be taken, or the fee paid, on the next succeeding secular or business day. 35 USC 21.

As per 35 USC 21, patentee filed the REQUEST on March 15, 2010.

Indeed, the date information on the imaged file history on PTO PAIR indicates that the REQUEST was received by the PTO on March 15, 2010.

In addition, the REQUEST (attached download from PTO PAIR) is stamped as being received by the PTO Central Fax Center on March 15, 2010

Thus, the REQUEST was timely filed.

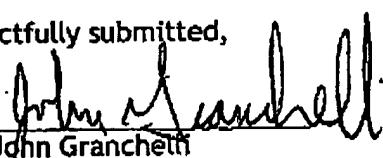
Unfortunately, in rendering its decision on the ineligibility of the REQUEST, the PTO has apparently relied on faulty data contained in the Transaction History record of PTO PAIR. The transaction history data (attached) for the above-identified patent indicates that a petition was entered on March 18, 2010. Were the REQUEST to have been filed on March 18, 2010, the REQUEST would have been ineligible for being untimely. It appears that the PTO relied on this erroneous data in making the Decision. Thus, the Decision dismissing the REQUEST is improper.

Patentee thus requests reconsideration of the Decision dismissing the REQUEST and again requests recalculation of the PTA under 35 USC 154(b) indicated on the above-identified patent. The patentee's sole basis for requesting the recalculation is the USPTO's Pre-Wyeth interpretation of 35 USC 154(b)(2)(a).

The improper Decision dismissing patentee's REQUEST is dated April 21, 2010. This reply is filed within one month or thirty days, whichever is longer, of the mail date of the Decision, and therefore is timely.

Respectfully submitted,

By


John Granchetti
Reg. No.: 39,512

Date: May 20, 2010

Docket Administrator - Room 3D-201
Alcatel-Lucent USA Inc
600-700 Mountain Avenue
Murray Hill, NJ 07974-0636

RECEIVED
CENTRAL FAX CENTER

MAY 20 2010



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

KRAMER & AMADO, P.C.
1725 Duke Street, Suite 240
Alexandria, VA 22314

Mail Date: 04/21/2010

Applicant : Jonathan Dean Segel	: DECISION ON REQUEST FOR
Patent Number : 7590055	: RECALCULATION OF PATENT
Issue Date : 09/15/2009	: TERM ADJUSTMENT IN VIEW
Application No : 10/773,226	: OF WYETH
Filed : 02/09/2004	:
	:

The Patentee's Request for Recalculation is DISMISSED.

This Request is deemed ineligible for consideration for one or more of the following reasons:

(A). The patent for which PTA recalculation is requested is either a design or reissue application or is a reexamination proceeding;

(B). The patent for which PTA recalculation is requested resulted from a utility or plant application filed under 35 USC 111(a) before May 29, 2000 and no CPA filed in the application on/after May 29, 2000;

(C). The patent for which PTA recalculation is requested resulted from an international application in which the international filing date was before May 29, 2000 and no CPA filed in the application on/after May 29, 2000;

(D). The patent for which PIA recalculation is requested issued on/after March 2, 2010;

(E). The Request for Recalculation was filed more than 180 days after the grant date of the patent and the request was not filed within two months of a dismissal of a request for reconsideration of the patent term under 37 CFR 1.705(d);

(F). The Request for Recalculation is not solely limited to USPTO pre-Wyeth interpretation of 35 U.S.C. 154(b)(2)(A);

or

(G). A civil action was filed pursuant to 35 U.S.C. 154(b)(4)(A) concerning the same patent at issue in this request.

Patentee may file a reply to this decision dismissing the Request for Recalculation. Patentee must file such reply within one month or thirty days, whichever is longer, of the mail date of the decision dismissing the Request for Recalculation. No fee is required if patentee is asserting in the reply that the dismissal for ineligibility is improper.

Patentee should use document code PET.OP if electronically filing a reply to this dismissal. If the USPTO finds that the request was improperly deemed ineligible, the USPTO will mail applicant a recalculation determination.

Patentee should be aware that in order to preserve the right to review in the United States District Court for the District of Columbia of the USPTO patent term adjustment determination, patentee must ensure that he or she also take the steps required under 35 U.S.C. 154(b)(4)(A). Nothing in the request for recalculation should be construed as providing an alternative time frame for commencing a civil action under 35 U.S.C. 154 (b)(4)(A).

Any questions concerning this decision should be directed to the Office of Patent Legal Administration at 571-272-7702.

PTOL-549D (04/10)

03/15/2010 11:49 9885824020

RECEIVED
CENTRAL FAX CENTER

MAY 20 2010

PAGE 01/04

RECEIVED
CENTRAL FAX CENTER
MAR 15 2010

FAX COVER SHEET

RE: OFFICIAL PAPER
TO: U.S. Patent and Trademark Office
FAX: 571-273-8300

FROM: Gregory J. Murgia
Reg. No. 41,209
Alcatel-Lucent USA Inc.

PHONE: (908) 582-7109
FAX: (908) 582-4020

DATE: March 15, 2010
Pages (incl. Cover): 4

Re: Request For Recalculation Of Patent Term Adjustment In View of Wyeth*

Case No: 137808-US-NP Patent No. 7,590,055
Case No: 137856-US-NP Patent No. 7,590,072
Case No: 137908-US-NP Patent No. 7,590,053

Certificate of Facsimile Transmission

I hereby certify that this correspondence (and any paper referred to as being transmitted therewith) is being facsimile transmitted to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313, on the date indicated below:

March 15, 2010
Date


MICHELE M. RUTTER

03/15/2010 MON 10:16 FAX 613 784 8923

RECEIVED
CENTRAL FAX CENTER

003/003

MAR 15 2010

Doc Code: PET.PTA.RCAL

Document Description: Request for Recalculation by view of Wyeth

PTO-258B 2A (01-07)

Approved for use through 02/28/2011. GOMR 04/01-2005

Under the Paperwork Reduction Act of 1995, no person is required to respond to a collection of information unless it displays a valid OMB control number.

REQUEST FOR RECALCULATION OF PATENT TERM ADJUSTMENT
IN VIEW OF WYETH/P

Attorney Docket Number:	137808-US-NP	Patent Number:	7,590,055
Filing Date (or 37 CFR (b) or (f) Date):	February 9, 2004	Issue Date:	September 15, 2009
First Name Inventor:	Jonathan Dean Segel		

Title: High availability broadband connections through switching from wireless to diverse wireless network

PATENTEE HEREBY REQUESTS RECALCULATION OF THE PATENT TERM ADJUSTMENT (PTA) UNDER 35 USC 154(d) INDICATED ON THE ABOVE-IDENTIFIED PATENT. THE PATENTEE'S SOLE BASIS FOR REQUESTING THE RECALCULATION IS THE USPTO'S PRE-WYETH INTERPRETATION OF 35 U.S.C. 154(b)(2)(A).

Note: This form is only for requesting a recalculation of PTA for patents issued before March 2, 2010, if the sole basis for requesting the recalculation is the USPTO's pre-Wyeth interpretation of 35 U.S.C. 154(b)(2)(A). See Instruction Sheet on page 2 for more information.

Patentees are reminded that to preserve the right to review in the United States District Court for the District of Columbia of the USPTO's patent term adjustment determination, a patentee must ensure that he or she also takes the steps required under 35 U.S.C. 154(b)(3) and (b)(4) and 37 CFR 1.705 in a timely manner.

*Wyeth v. Kappos, No. 2008-1120 (Fed. Cir., Jan. 7, 2010).

Signature:	John Grandelli	Date:	March 15, 2010
Name (Printed)	JOHN GRANDELLI	Registration Number:	32,512
Duly sworn to or affirmed or record of the entire interest or their representative(s) are required in accordance with 37 CFR 1.83 and 17.10. Please see 37 CFR 1.705 for the form of the signature. If necessary, submit multiple forms for more than one signature.			
<input checked="" type="checkbox"/>	7003 of 1 forms are submitted.		

The Recalculator is required to obtain or retain a copy of the publication to be used by the USPTO to process an application. Confidentiality is governed by 35 U.S.C. 123 and 37 CFR 1.11 and 1.14. The Recalculator is authorized to keep the name of Recalculator, address, gathering, preparing, and submitting the corrected application form to the USPTO. The work depends upon the individual case. Any comments or the extent of time you require to complete this form and/or any questions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. OR MAY SEND FAX TO COMPLETED FORMS TO THIS ADDRESS. SEND TO: Comptroller of Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-8110 and select option 2.

137808PAIRprintServlet.txt
10/773,226 HIGH AVAILABILITY BROADBAND
CONNECTIONS THROUGH
SWITCHING FROM WIRELINE TO DIVERSE WIRELESS
NETWORK
05-12-2010::15:55:36

Transaction History

Date Transaction Description
04-21-2010 Mail-Petition Decision - Dismissed
04-17-2010 Petition Decision - Dismissed
03-18-2010 Petition Entered
09-15-2009 Recordation of Patent Grant Mailed
08-26-2009 Issue Notification Mailed
09-15-2009 Patent Issue Date Used in PTA

Calculation
08-14-2009 Dispatch to FDC
08-07-2009 Issue Fee Payment verified
08-13-2009 Application Is Considered Ready for

Issue
08-07-2009 Issue Fee Payment Verified
08-07-2009 Issue Fee Payment Received
05-14-2009 Mail Notice of Allowance
05-11-2009 Document Verification
05-11-2009 Notice of Allowance Data verification

Completed
03-09-2009 Date Forwarded to Examiner
02-10-2009 Response after Non-Final Action
01-27-2009 Mail Non-Final Rejection
01-21-2009 Non-Final Rejection
11-14-2008 Date Forwarded to Examiner
11-05-2008 Response after Non-Final Action
10-31-2008 Mail Notice of Informal or

Non-Responsive RCE Amendment
10-30-2008 Notice of Informal or Non-Responsive
RCE Amendment.
10-09-2008 Date Forwarded to Examiner
10-09-2008 Date Forwarded to Examiner
10-06-2008 Request for Continued Examination

(RCE)
10-09-2008 Disposal for a RCE / CPA / R129
10-06-2008 Workflow - Request for RCE - Begin
10-06-2008 Case Docketed to Examiner in GAU
07-09-2008 Mail Final Rejection (PTOL - 326)

137808PAIRPrintServlet.txt
07-07-2008 Final Rejection
04-23-2008 Date Forwarded to Examiner
03-28-2008 Response after Non-Final Action
02-06-2008 Mail Non-Final Rejection
02-04-2008 Non-Final Rejection
11-08-2007 Date Forwarded to Examiner
10-31-2007 Response after Non-Final Action
07-31-2007 Mail Non-Final Rejection
07-18-2007 Non-Final Rejection
06-16-2005 Information Disclosure Statement

considered
06-04-2007 Case Docketed to Examiner in GAU
01-18-2007 Case Docketed to Examiner in GAU
09-25-2006 Miscellaneous Incoming Letter
03-21-2006 Case Docketed to Examiner in GAU
02-10-2006 Case Docketed to Examiner in GAU
07-21-2005 Correspondence Address Change
06-16-2005 Reference capture on IDS
06-16-2005 Information Disclosure Statement

(IDS) Filed
06-16-2005 Information Disclosure Statement

(IDS) Filed
07-01-2004 IFW TSS Processing by Tech Center

Complete
07-01-2004 Case Docketed to Examiner in GAU
05-06-2004 Application Return from OIPE
05-06-2004 Application Return TO OIPE
05-06-2004 Application Dispatched from OIPE
05-07-2004 Application Is Now Complete
03-17-2004 Cleared by OIPE CSR
02-19-2004 IFW Scan & PACR Auto Security Review
02-09-2004 Initial Exam Team nn

Close window

Page 2